

SUPREME COURT OF THE UNITED STATES

Nos. 90-8126 AND 90-8184

90-8126
LEON EARLY
v.
UNITED STATES

90-8184
BILLY WAYNE COLEMAN
v.
UNITED STATES

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[October 15, 1991]

The petitions for writs of certiorari are denied.

JUSTICE WHITE, dissenting.

The question in these cases is whether an amendment to the Commentary to the United States Sentencing Guidelines should govern a sentencing which occurred prior to the effective date of the amendment. A majority of the Courts of Appeals have applied such an amendment when it clarified, but did not substantively change, the operation of an existing Guideline. *E. g.*, *United States v. Caballero*, 936 F. 2d 1292, 1299 n. 8 (CA10 1991); *United States v. Urbanek*, 930 F. 2d 1512, 1514-1515 (CA10 1991); *United States v. Lillard*, 929 F. 2d 500, 502-503 (CA9 1991); *United States v. Fiala*, 929 F. 2d 285, 290 (CA7 1991); *United States v. Nissen*, 928 F. 2d 690, 694-695 (CA5 1991); *United States v. Perdomo*, 927 F. 2d 111, 116-117 (CA2 1991); *United States v. Fells*, 920 F. 2d 1179, 1184 (CA4 1990) (Wilkins, J.), cert. denied, ___ U. S. ___ (1991).

In contrast, the Eighth Circuit has held that an amend-

ment may not be applied before its effective date. See *United States v. Watt*, 940 F. 2d 332, 333 (CA8 1991); *United States v. Dortch*, 923 F. 2d 629, 632 n. 2 (CA8 1991). In these cases the Sixth Circuit did not apply an amendment that took effect after the petitioners had been sentenced in district court. But see *United States v. Sanchez*, 928 F. 2d 1450, 1458-1459 (CA6 1991) (applying such an amendment).

The United States Sentencing Commission has not addressed this recurring issue. See 56 Fed. Reg. 22762-22797 (1991) (Nov. 1991 Guideline amendments). See generally *Braxton v. United States*, __ U. S. __, __ (1991). Accordingly, I would grant certiorari and consolidate these cases to resolve the conflict in the circuit courts.